

Before the
Federal Communications Commission
Washington, D.C.

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In the Matter of)	
)	
Amendment of Rules and)	CS Docket No. 97-98
Policies Governing Pole)	
Attachments)	

REPLY COMMENTS OF AMERITECH

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I.
INTRODUCTION AND SUMMARY

On March 14, 1997, the Commission issued its Notice of Proposed Rule Making ("Notice") regarding its rules with respect to the maximum just and reasonable rates a utility may charge for attachments to poles, ducts, conduits and rights-of-way. Initial comments were filed by many parties, including Ameritech, on June 27, 1997. In reply to the submitted comments, the Ameritech Operating Companies (collectively, "Ameritech")¹ respectfully submit the following reply comments.

In summary, Ameritech's reply comments call the Commission's attention to the fact that a letter from Kenneth Moran of the Common Carrier Bureau does not support Time Warner's assertion that the letter supports the proposition that certain pole rental charges paid by pole owners should be excluded from the pole rental formula. Ameritech supports the Commission's views that ducts reserved for municipalities and maintenance should be excluded from the average number of ducts in a conduit; the proposal both

¹ The Ameritech Operating Companies are Ameritech Illinois (a/k/a Illinois Bell Telephone Company), Ameritech Indiana (a/k/a Indiana Bell Telephone Company), Ameritech Michigan (a/k/a Michigan Bell Telephone Company), Ameritech Ohio (a/k/a The Ohio Bell Telephone Company), and Wisconsin Bell, Inc., (d/b/a Ameritech Wisconsin).

represents industry practice and is fair to both attaching parties and conduit owners. Further, the Commission's half-duct presumption is appropriate in light of existing inner-duct deployment, uncertain future deployment and the Commission's objectives of simplicity and efficiency.

Also, Ameritech expresses the views that attachments of wireless providers in the "usable space" ought not to be treated differently from the cable attachments of wire based providers; that "non-usable" space is properly included in the rate formula; and that the encouragement of "reciprocal attachment rights" relationships require clarification of the obligations of non-utility structure owners. Finally, Ameritech supports the positions of the Electric Utility Coalition in regard to (i) penalties for illegal attachments, (ii) assessment of additional charges for the defaults of attaching parties regarding pole removals, and (iii) initiation of billing for structure upon notice of structure readiness, rather than actual attachment.

II. TIME WARNER MISCHARACTERIZES THE COMMON CARRIER BUREAU'S POSITION ON THE EXCLUSION OF POLE RENTAL FEES FROM THE RATE FORMULA

In its Comments², Time Warner Cable asserts that the Common Carrier Bureau has supported exclusion of pole rental fees paid by incumbent carriers from the pole attachment rate formula. Time Warner Cable relies on a letter from Kenneth P. Moran to Paul Glist dated June 22, 1990³ as support for this position.

The Moran letter responds to several questions regarding the mapping of Part 31 accounts to Part 32 accounts. It specifically notes that pole rental fees were included in the administrative component of the rate formula under Part 31, but are included in the maintenance component under Part 32. The letter does not express a view on the appropriateness of the pole rental fees in the pole rate formula. If anything, by

² Comments of Time Warner Cable ("Time Warner"), p. 26.

³ Id., p. 26, Fn. 44.

demonstrating the mapping, the letter implicitly supports the view that these costs are properly included in the pole attachment rate formula.

Ameritech reiterates the position expressed in its Initial Comments⁴, that pole rental fees paid to acquire assignable space on poles owned by others are properly included in the pole rate formula and that the Commission's complaint jurisdiction provides a means for attaching parties to challenge improperly included rental fees. Therefore, these expenses ought not to be categorically excluded from the formula.

III. CERTAIN RESERVED DUCTS SHOULD BE EXCLUDED FROM THE CONDUIT RATE FORMULA

In its Initial Comments⁵, Ameritech supported the Commission's proposal to reduce the average number of ducts in a conduit by ducts reserved for other uses, and therefore, unusable for the attachments of the incumbent carrier other telecommunications carriers and cable television system operators. These other uses are typically for maintenance purposes or for use by municipalities. In its Comments⁶, the National Cable Television Association (NCTA) asserts that these presumptions should not be made because they are not reflective of field practice.

A. Ducts Reserved for Municipalities.

NCTA objects to the proposed presumption that ducts reserved for the use of the municipality with jurisdiction should be considered unavailable in the computation of conduit rental rates. NCTA asserts that such reserved ducts are not required everywhere and that, where required, a duct is not actually reserved, but merely provided when demanded by the municipality.

⁴ Initial Comments of the Ameritech Operating Companies, pp. 4-5.

⁵ Id., pp. 6-7.

⁶ Comments of the National Cable Television Association, et al ("NCTA"), pp. 43-44 and fn. 109.

It is true that not every municipality requires, in a franchise or ordinance, a reservation of a duct for its own use. However, in the Ameritech region, this is a common, if not universal, requirement. Further, there has been significant activity recently on the part of municipalities in the Ameritech region aimed at adopting or revising ordinances or franchises regulating telecommunications use of public right-of-way. Requirements for reservation are often an element of these new franchises or ordinances. Finally, even if the duct is not always kept vacant, the conduit owner bears the obligation of creating the duct for the municipality's use when demanded.

Exclusion of such ducts from the rate formula is an appropriate means to recognize an expense of the conduit owner for which it has no other means of recovery, either by its own use or rental to others. Accordingly, Ameritech believes that a presumption that ducts reserved for municipal use are not available for use by the incumbent carrier or other attaching parties is appropriate. Attaching parties can rebut the presumption in challenges to attachment rates under the Commission's complaint jurisdiction.

B. Maintenance Ducts.

NCTA objects to the proposed presumption that a duct in each conduit should be considered unavailable because it is reserved for maintenance or emergency purposes. NCTA asserts that ducts reserved for maintenance purposes are not available to cable television operators in the event of an emergency.

Ameritech reserves one full duct and one inner-duct in each conduit profile for maintenance purposes.⁷ In accord with its obligations under sec. 224(f), Ameritech

⁷ Maintenance includes routine maintenance and emergency repairs. Routine maintenance typically involves replacing a defective or fully used cable with a new or larger capacity cable. The maintenance duct is used to place the new cable while the cable to be replaced is left in place to provide continuity of service. Once the new cable is cut in, the defective or undersized cable is removed and its duct becomes the new maintenance duct. Reservation of a full duct and an inner-duct as maintenance ducts permits a copper cable and fiber cable replacement to be conducted simultaneously. Emergencies typically involve outages due to cable cuts caused by a natural or man-made catastrophe. Such emergencies often involve damage to the duct or conduit system itself, and will typically involve the maintenance duct as well as the other ducts. Ameritech has developed a protocol for restoration of services in the event of emergency outages that prioritizes restoration of the services provided by all parties occupying a structure which is damaged based upon the Telecommunications Services Priority system of the National Security Emergency Preparedness guidelines. Availability of the maintenance duct for emergency use, to the

makes these maintenance ducts available in a non-discriminatory fashion to telecommunications providers and cable television operators occupying ducts in a conduit system. This is reflected in provisions of tariffs recently filed by Ameritech operating companies in states in the Ameritech region, as well as in interconnection agreements⁸ and Ameritech's filed statement of generally available terms.

Accordingly, Ameritech believes the presumption that one duct and one inner-duct in each conduit profile is reserved for maintenance and should be excluded from the conduit rate formula is appropriate.

IV. THE COMMISSION'S PROPOSED HALF-DUCT PRESUMPTION IS REASONABLE

In the Notice⁹, the Commission sought comment on its proposed presumption that an attaching party occupies a half (1/2) duct and that the 1/2-duct approach is an appropriate, simple and administratively efficient means to develop rates for conduit occupancy. Some commenters¹⁰ argue for a quarter (1/4) duct presumption. Others¹¹ support a presumption between a third (1/3) and a quarter (1/4). Still others¹² support a third (1/3) presumption. These commenters point out that new technologies, essentially

extent the maintenance duct is undamaged and useful for service restoration, would be based on the protocol.

⁸ For instance, sec. 16.9 of the *Interconnection Agreement between Ameritech Michigan and AT&T* provides:

Maintenance Ducts. One duct and one inner-duct in each conduit section shall be kept vacant as maintenance ducts. Maintenance ducts shall be made available to AT&T for maintenance purposes if it has a corresponding Attachment.

⁹ Pars. 44 and 46.

¹⁰ Comments of Tele-Communications, Inc. ("TCI"), p. 16; NCTA, p. 42.

¹¹ Comments of the Association for Local Telecommunications Services, p. 7; Comments of MCI Telecommunications Corporation, p. 25.

¹² Time Warner, p. 28; Comments of AT&T Corp., p. 22.

smaller diameter inner-ducts, will permit more inner-ducts to be placed in each duct, and, therefore, the presumption should be altered accordingly.

The commenters wish the presumption to be based on what is possible, but not to consider what is already in place. To be done accurately, the ratio would be based on a weighted average of existing inner-ducts and projections for inner-ducts to be placed in existing and ducts constructed in the future. While 3 1/2" ducts may accommodate 3-1" inner-ducts and 4" ducts, 4-1" inner-ducts,¹³ it is not always practical or prudent to place that many inner-ducts. First, such inner-ducts could accommodate only cables with diameters of less than 0.80",¹⁴ but, depending upon the likely technologies to be used in any given area, a larger diameter cable may be more typical or desired. Further, it may not be possible to place the maximum number of inner-ducts if the condition of the duct is such that the inner-ducts will be deformed after placement and so rendered useless. So, what is possible may not be what is desirable or practicable. In any event, a real ratio based on such a weighted average calculation will never be 1/4-duct. It is more likely to be between a 1/2- and 1/3-duct.

The Commission's objective is to adopt a presumption that is appropriate, simple and administratively efficient. Too low a presumption (1/3- or 1/4-duct) penalizes the conduit owner and subsidizes new users. Since much of the early facility based competition is likely to focus on business customers in central business areas where 3 1/2" ducts are common (and, therefore, the 1/2-duct presumption most valid), it seems that the 1/2-duct presumption best meets the Commission's objectives with respect to the formula.

¹³ Ameritech's current guideline is to install a maximum of two 1-1/4" inner-ducts and one 1" inner-duct in a 3-1/2" duct and a maximum of three 1-1/4" inner-ducts in a 4" duct. The actual number installed in a given location depends upon the condition of the ducts in which the inner-ducts are to be installed. If the ducts have been flattened and are out-of-round or have discontinuities or are not straight, installing the maximum number of inner-ducts would cause some of the inner-ducts to deform and hence, be unusable. In such instances, fewer inner-ducts are installed to ensure that those installed will be usable. It is not uncommon to encounter ducts with discontinuities, especially in older parts of the conduit system. Past Ameritech practice was to place two 1-1/4" inner-ducts in 3-1/2" ducts; the standard for 4" ducts is unchanged.

¹⁴ The engineering rule-of-thumb is that an inner-duct can accommodate a cable with an outside diameter which is 80% of the inner diameter of the inner-duct. Cables of larger diameter are difficult or impossible to place due to the friction of the cable sheath with the walls of the inner-duct and the increased areas of sheath-to-wall contact during cable pulling operations as compared with smaller diameter cables.

The presumption, being a presumption, is rebuttable and can be revised at a future date when technology and the direction of facility based competition are more certain.

V.

COMMENTS ON OTHER ISSUES

A. Attachments of wireless providers should be treated like any other attachment if made in the usable space.

The Public Service Company of New Mexico, an electric utility, argues that rates for the attachments of wireless telecommunications providers should be determined by the market.¹⁵ The Commission's pole rate formula is based on a presumption of use by an attaching party of one foot of usable space on a pole. A wireless telecommunications provider is no different than a traditional wireline telecommunications carrier for purposes of a right of access to poles of a utility under sec. 224. Accordingly, if the wireless carrier is occupying usable space, it ought to pay the same rates as other parties attaching in such space.

B. Non-usable space is properly included in the Commission's current formula.

TCI asks the Commission to determine that inclusion of costs for unusable space in the pole rate formula as applied to "pure" cable operators violates the Act.¹⁶ Under the Commission's current formula, "unusable space" is the space below the lowest horizontal cable attachment which can be made and still comply with clearance to ground requirements, in essence, the portion of the pole that supports and creates all the usable space.¹⁷ Of course, without the unusable space there can be no usable space, unless TCI or someone else has finally invented the oft-desired "sky hook", that mythical anchor in

¹⁵ Public Service Company of New Mexico, p. 5.

¹⁶ TCI, p. 14.

¹⁷ The Commission's formula presumes a 37.5' average pole and 13.5' of usable space. Based on that presumption, 24' of such a presumed average pole would be "unusable space."

the air with no connection to the ground. Unfortunately, in our world gravity intervenes, so there can be no “usable space” without the attendant “unusable space.” Obviously, excluding the costs of the unusable space from the pole rate formula would result in an unjustified subsidy to cable operators and would violate the requirement of sec. 224(d)(1) permitting a utility to recover its costs to create usable space.

C. The legal environment is not ripe for the joint use or ownership participation by non-utility attaching parties.

TCI asks the Commission to affirmatively promote “reciprocal attachment rights” arrangements between Section 224 utilities (electric companies and incumbent local exchange carriers) and Section 224 attaching parties (cable television operators and telecommunications service providers)¹⁸, of the nature of the existing joint use or joint ownership agreements between electric utilities and incumbent local exchange carriers. While such arrangements may have economic logic, two legal circumstances constrain the practicality of any such new arrangements.

Electric utility and incumbent local exchange carrier joint use or joint ownership arrangements are not truly voluntary arrangements. They were borne out of statutes obligating public utilities to share facilities in the right of way. These statutes were a response to the proliferation of unsightly and dangerous multiple pole lines prevalent in the early days of ubiquitous telephony and electric service. Sharing is not voluntary, but mandatory, and disagreement by the parties over the terms of sharing is subject to resolution by a government body, usually the state public service commission. This is appropriate because the public interest in safety of the right of way require prudent management and sharing of facilities such as poles located in the right of way. The current forms of these sharing laws typically would not encompass shared ownership with others beyond the electric utility and the incumbent local exchange carrier.

¹⁸ TCI, pp. 23-24.

Secondly, as noted by TCI,¹⁹ the policy underlying Section 224 was to remove ownership of poles and conduit as a competitive advantage in facilities-based competition. But in its current form, Section 224 burdens only electric utilities and incumbent local exchange carriers. So, cable operators or other telecommunications carriers owning poles under the proposed “reciprocal attachment rights” arrangements would not be obligated to make attachments to such poles available to other cable operators or telecommunications carriers. This would essentially put these new pole owners in the position they complain about: absolute control over a bottleneck facility.

Section 224 may not be a perfect vehicle with regard to the pricing and terms of sharing, but the promotion of “reciprocal attachment rights” TCI urges would be a step backward until the obligations of these new owners of poles and conduit are clarified on both a state and federal level.

It should be noted that as to newly constructed or modified poles or conduit, the Commission’s decisions in the Interconnection Order²⁰ and associated rules²¹ essentially require the capital cost sharing TCI suggests by requiring the parties participating in or using the modified structure to pay each’s proportionate share of the cost of creating the structure. The Interconnection Order²² burdens the electric utility and incumbent local exchange carrier owning the modified structure with the responsibilities of management and administration of the structure. This approach recognizes the status of existing state laws and the public’s interest in the efficient and unitary ownership of structures in the rights of way, while concurrently promoting fair allocations of costs for and rights in the structure among owners and other users.

¹⁹ TCI, p. 23.

²⁰ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, *First Report and Order*, (“Interconnection Order”), Pars. 1211-1216.

²¹ 47 CFR Sec. 1.1416(b).

²² Order, par. 1216.

D. Certain additional charges are appropriate.

1. Penalties or higher rates for illegal attachments.

Ameritech supports the views of the Electric Utilities Coalition (“EUC”) regarding higher rates or penalties for illegal attachments to poles.²³ Any person owning or controlling an interest in a pole or conduit should be allowed to impose penalty rates for illegal attachments.²⁴ Such penalty rates are common practice now and, as the EUC points out, are necessary to discourage attaching parties from placing attachments without the structure owner’s knowledge. Absent a penalty, attaching parties have no disincentive to attach without knowledge and consent of the owner and are, in fact, incited to do so. The knowledge and consent of the owner is necessary to ensure orderly administration of the structure and safety, for the benefit of not just the owner but also the public, which relies on the owner to safely and prudently administer structures in the right-of-way.

2. Pole removal costs.

Similarly, Ameritech supports EUC’s view that an attaching party who causes additional costs to a pole owner or joint user by not timely moving facilities in pole replacements should directly bear such costs.²⁵

When a pole with multiple parties’ attachments requires replacement, it is most efficiently done by having the electric company set the new pole and transfer all attachments. If transfers are done sequentially rather than simultaneously, the electric company would move the attachments at the top of the pole (i.e., the power facilities). The next party down the pole, typically a cable operator, must transfer its attachment(s) next. Finally, the incumbent local exchange carrier, who occupies the lowest position on the pole, transfers its facilities, and removes and disposes of the pole. It is Ameritech’s

²³ Joint Comments of the Electric Utilities Coalition (“EUC”), pp. 59-60.

²⁴ Illegal attachments are attachments made without the knowledge and consent of the owner of the pole, conduit or right-of-way.

²⁵ EUC, pp. 58-59.

experience that the parties attached above it (other than the electric company) often do not timely transfer their attachments to the new pole, thereby necessitating multiple trips by Ameritech before Ameritech's facilities can be transferred and the pole removed. Attaching parties who fail to timely transfer their attachments should, therefore, bear directly the added costs to those below them on the pole for such failures.

3. Initiation of billing.

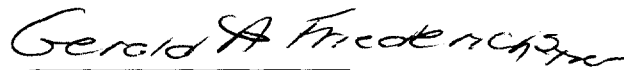
Ameritech also supports EUC's view that billing of charges for attachments should commence when a structure owner issues a permit authorizing attachment.²⁶ Ameritech issues a permit immediately after a pole, conduit or right of way has been made ready for the proposed attachment by an attaching party. At that point, that portion of the pole, conduit or right of way is available only to the attaching party (subject only to loss for failure to attach within the prescribed time, to prevent *de facto* reservation). It is only appropriate that the attaching party pay for the right to attach from the time that right comes into being. This is industry practice, and is also Ameritech's practice.

²⁶ EUC, p. 60.

VI.
CONCLUSION

Ameritech respectfully requests that the Commission consider the foregoing reply comments, and Ameritech's initial comments, in making its decisions in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, reading "Gerald A. Friederichs". The signature is written in dark ink and is positioned above a horizontal line.

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August 11, 1997

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Ameritech's Reply Comments has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 11th day of August, 1997.

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